

**MINUTES OF THE  
HOUSE SPECIAL INVESTIGATIVE COMMITTEE**  
Tuesday, November 5, 2013 – 9:00 a.m. – Room 445 State Capitol

**Members Present:**

Rep. James A. Dunnigan, Chair  
Rep. Rebecca Chavez-Houck  
Rep. Brad L. Dee  
Rep. Susan Duckworth  
Rep. Francis D. Gibson  
Rep. Lynn N. Hemingway  
Rep. Lee B. Perry  
Rep. Jennifer M. Seelig

**Members Absent:**

Rep. Mike K. McKell

**Staff Present:**

Mr. Jerry D. Howe, Managing Policy Analyst  
Mr. John L. Fellows, Legislative General Counsel  
Mr. Eric N. Weeks, Deputy General Counsel  
Ms. Sara J. Thomas, Legislative Secretary

**Note:** A list of others present, a copy of related materials, and an audio recording of the meeting can be found at [www.le.utah.gov](http://www.le.utah.gov).

**1. Committee Business**

Chair Dunnigan called the meeting to order at 9:17 a.m. Rep. McKell was excused from the meeting.

**MOTION:** Rep. Duckworth moved to approve the minutes of the October 8, 2013, meeting. The motion passed unanimously.

**2. Consideration of Policies and Procedures of the House Special Investigative Committee**

Mr. Fellows distributed "Policies and Procedures of the House Special Investigative Committee." He explained that because this investigative committee is unique, the Legislature has no policies or procedures in place to govern how this committee should operate. He briefly summarized each proposed policy and procedure for the committee.

**MOTION:** Rep. Hemingway moved to approve the policies and procedures of the House Special Investigative Committee. The motion passed unanimously.

**3. Receive Legal Advice and an Investigative Briefing**

Mr. Steven Reich, Special Counsel, provided an update to the committee on the status of the investigation. Mr. Reich reported that since the committee's last meeting, the investigative team has encountered missing electronic records, failures to order the preservation of evidence, and a witness that has ignored a committee subpoena for documents. He reviewed the scope of the missing information and emphasized the importance of recovering this data. He stated that, in addition to the content of the records, it is also important to know how the data became unavailable. He responded to questions from the committee relating to record retention and protected personal health information contained in some of the records.

The committee discussed the missing electronic records and whether the Department of Justice, the FBI, and the two county attorneys were aware that data was missing.

Mr. Reich explained the problematic failure of the attorney general's office to issue a timely order to employees to preserve documents relevant to the various investigations of the attorney general that have arisen over the period of the last year. He illustrated that it is well understood in the legal profession that when an investigation is opened, the subject of that investigation has an obligation to preserve relevant

documents. He demonstrated how the failure to issue a document hold sooner has impacted the committee's work. He responded to questions from the committee regarding document holds and the Government Records Access and Management Act.

The committee discussed considering legislation that examines the circumstances under which a Utah government agency should impose a litigation hold.

Mr. Reich provided background information on a document subpoena the committee issued to Softwise, Inc. on October 4, 2013. He explained that Softwise, Inc. is not complying with this subpoena and illustrated why the committee needs the documents requested in the subpoena. He responded to questions from the committee.

**MOTION:** Rep. Perry moved to authorize staff to take any and all steps necessary to enforce compliance with the subpoena issued to Softwise, Inc. The motion passed unanimously.

Mr. Reich noted that sworn testimony was given by the attorney general to attorneys representing the lieutenant governor's office. Mr. Reich explained, in response to a request to the lieutenant governor's office for the transcript, that both the attorney general's office and Softwise, Inc. first need to grant permission before the transcript can be released to the committee's investigators. He responded to questions from the committee.

**MOTION:** Rep. Dee moved that the committee prepare a letter urging the attorney general and Softwise, Inc. to cooperate with the House Special Investigative Committee and to make a copy of the transcript of the attorney general's testimony and attached exhibits available to the committee. The motion passed unanimously.

The committee discussed how they should proceed if the attorney general and Softwise, Inc. do not approve the release of the transcript and attached exhibits.

#### **4. Other Business**

**MOTION:** Rep. Seelig moved, as provided in Utah Code Title 36, Chapter 12, Legislative Organization, and Title 52, Chapter 4, Open and Public Meetings, that the meeting be closed for the committee to receive legal advice and to discuss the character, professional competence, or physical health of an individual. The motion passed unanimously.

**MOTION:** Rep. Chavez-Houck moved to open the meeting. The motion passed unanimously.

#### **5. Adjourn**

**MOTION:** Rep. Perry moved to adjourn the meeting. The motion passed unanimously.

Chair Dunnigan adjourned the meeting at 2:03 p.m.